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November 29, 2005

Via Overnight Mail and ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
9300 East Hampton Drive
Capitol Heights, MD 20743

**Re: WTEN-DT, Albany, New York
MB Docket No. 05-317
TELEVISION STATION SECTION 339(a)(2)(D)(vii) WAIVER REQUEST**

Dear Ms. Dortch:

On behalf of Young Broadcasting of Albany, Inc. ("Young"), permittee of Digital Television Station WTEN-DT, Albany, New York, this letter requests a waiver to prohibit satellite subscribers from obtaining signal tests of WTEN-DT's digital signal pursuant to Section 339(a)(2)(D)(vii) of the Communications Act, as amended by the Satellite Home Viewer Extension and Reauthorization Act of 2004 ("SHVERA"). The instant request is filed pursuant to the procedures set forth in the Commission's Public Notice in DA 05-2979 (Nov. 17, 2005).

WTEN-DT is the ABC affiliate located in the Albany-Schenectady-Troy Designated Market Area ("DMA"). The Albany-Schenectady-Troy DMA is ranked 55th among Nielsen Media's 210 television markets for the 2005-2006 television season. WTEN-DT has received a tentative digital

channel designation of Channel 26, which is WTEN-DT's allotted digital channel. *See* Public Notice, DA 05-2649 (Oct. 4, 2005). Accordingly, absent grant of the instant waiver request, effective April 30, 2006, satellite subscribers may request a signal test to demonstrate eligibility under SHVERA to receive a distant digital signal of a station affiliated with the same network as WTEN-DT.

Pursuant to **Section 339(a)(2)(D)(viii)(I)** of the Act, Young requests a waiver on the basis that WTEN-DT experienced "the need for international coordination or approvals" that delayed the buildout of WTEN-DT beyond Young's control.

In Young's FCC Form 381 filing, FCC File No. BCERCT-20041105AFJ, Young certified that it will operate its post-transition DTV station as authorized by its construction permit in FCC File No. BMPCDT-20041028AEB ("Mod CP"). However, due to the reasons set forth herein, WTEN-DT is not currently on the air with its full-power DTV signal. As discussed at length in previous filings,¹ Young's complete construction of the WTEN-DT full-power digital facility, as contemplated by the Mod CP, was held up by international coordination with Canada. Canadian concurrence was finally received, allowing the Commission to grant the Mod CP on August 9, 2005, with an expiration date of August 16, 2005. Young's request for extension of its DTV construction permit remains pending in FCC File No. BEPCDT-20050815ABP, as does its request for waiver of the DTV maximization deadline. Currently, and during the pendency of the Mod CP application, Young has operated WTEN-DT at reduced power pursuant to special temporary authority ("STA"). The Commission last granted WTEN-DT an extension of its DTV STA on February 28, 2005, and Young's request to further extend its DTV STA remains pending in FCC File No. BEDSTA-20050701ADU.

In order to commence full-power operation of WTEN-DT, Young must install a transmission tube and related equipment. Following the grant of the Mod CP, Young timely ordered all necessary equipment and, on November 22, 2005, it received the equipment necessary for the final stage of construction of WTEN-DT's digital facility. Installation of this equipment is scheduled to begin during the second week of December 2005.

In sum, until August 9, 2005, Young's construction of its full WTEN-DT facilities was contingent on Commission action with respect to WTEN-DT's Mod CP, which was "hung up" in the Canadian coordination process for many months. Following the August 9, 2005, grant by the

¹ For a complete history of Young's efforts to construct the WTEN-DT facility, please see the freeze waiver request attached as Attachment 44 to the minor modification application in File No. BMPCDT-20041028AEB and Young's May 10, 2005, letter from Mark J. Prak and Coe W. Ramsey to Marlene H. Dortch regarding WTEN-DT's Request for Maximization/Replication Waiver.

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Commission of that application, Young is now moving forward with celerity to finalize construction and commence full-power operation of its digital facility. Although Young anticipates that it will be able to commence full-power operations prior to April 30, 2006, Young is filing the instant waiver request out of an abundance of caution to protect against the event that unforeseen circumstances beyond its control cause a change in the anticipated installation schedule.

Absent grant of the instant waiver request to prevent signal testing under SHVERA, WTEN-DT is in jeopardy of losing service to a substantial portion of the people predicted to receive service from the station who may otherwise be eligible to receive service from a distant network affiliate should additional, unforeseen circumstances beyond the station's control prevent WTEN-DT from commencing full-power operations prior to April 30, 2006.

Accordingly, because, as of the statutory waiver request deadline, WTEN-DT is not broadcasting with full authorized power as a result of construction delays due to "the need for international coordination or approvals," WTEN-DT satisfies the waiver criterion of Section 339(a)(2)(D)(viii)(I) of the Act.

For the reasons stated herein, Young requests a waiver to prohibit digital signal testing under SHVERA. If any questions should arise during the course of your consideration of this request, it is respectfully requested that you communicate with this office.

Sincerely,

BROOKS, PIERCE, McLENDON,
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